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REMARKS

Claims 1 and 3 stand rejected under 35 U.S.C. § 102 as being anticipated by both the Alferness U.S. Patent 5,703,343 and the Krueger U.S. Patent 6,193,648. The applicant disagrees with this rejection. However, as discussed below, independent claim 1 has been amended to include the features of claim 2. Withdrawal of the § 102 rejections are therefore requested.

Claims 2 and 4-8 are rejected under 35 U.S.C. § 103 as being unpatentable over the Alferness U.S. Patent 5,703,343. In the discussion of this rejection the Office Action acknowledges that the Alferness patent fails to specifically disclose that the second incision is made from a position superior to the heart and/or delivery device. However, the position was taken that since the size of the jacket is adjusted by moving opposing edges of the slot closer together via fasteners, it would have been obvious for the second incision to provide access suitable for surgical instruments to secure or adjust the CRD from a position superior to the heart and/or the delivery device. In support of this position the Office Action asserts that because the pulling forces to secure or adjust the CRD are necessarily upwards and toward the opposing side of the slot in order to securely fit the CRD jacket over the surface of the heart, they are most effectively performed from an incision location superior to the heart and delivery device incision. The applicant respectfully disagrees with this position.

By this response claim 1 is amended by incorporating the features of claim 2. The method recited by claim 1 now includes positioning the jacket around the heart by applying a pulling force *from a position superior to the heart*. This method offers a number of important advantages. In particular, it can be performed using minimally invasive surgical techniques to minimize trauma to the heart. The method is also efficacious. A method having these features and advantages is neither taught nor suggested by the Alferness patent or the other prior art references of record.

The Alferness patent illustrates in Figures 7 and 8 a placement tool that can be used to place the jacket over the patient's heart. The placement tool is guided through an incision in the thorax. The base end of the jacket is held open by a guide tube through which a wire or stiffening rod is passed. The jacket is then maneuvered into position over the heart. Once

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the jacket is in its proper position, the wire extending through the guide tube around the base of the jacket is extracted, and the guide tube removed. The lateral attachment cords can then be fastened to secure the jacket.

These procedures take place from locations generally below or on the side of the heart. Pushing forces are used to advance the CRD over the heart. Although the lateral edges of the device are pulled together, there is no suggestion that these forces are applied from a location superior to the heart.

The obviousness position stated in the Office Action is conclusory. No support whatsoever is provided for the assertion that fitting the CRD "may be most effectively performed from an incision location superior to the heart ..." In fact, the Alferness patent suggests otherwise. It describes effective methods for fitting the device that have no such features. Speculation of the type advanced in the Office Action is not an appropriate basis for a finding of obviousness. Absent objective support, the rejection is improper.

Withdrawal of the rejection of claims 1 and 3-8 are requested for these reasons.

The indication of allowable subject matter for claims 9-18 is appreciated. However, for the reasons described above, these claims are patentable as presented.

In conclusion, claims 1 and 3-18 are now in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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